owner to cure such failure. A decision by HUD in this regard is subject to the administrative appeals procedure in subpart F of this part, unless HUD acts on the basis of the grounds specified in sections 517(a)(4)(A) or (B) of MAHRA.

(5) HUD will consider modification or forgiveness of all or part of the second mortgage only if the project has been sold or transferred to a priority purchaser under § 401.480 and HUD determines that modification or forgiveness is necessary to recapitalize the project in order to preserve it as affordable housing.

(c) *Additional mortgage to HUD.* A Restructuring Plan may require the owner to give an additional mortgage on the project to HUD in an amount that does not exceed the difference between the amount of a section 541(b) claim paid under § 401.471 and the principal amount of the second mortgage. HUD will provide guidance to PAEs regarding the circumstances under which a Plan may be negotiated that provides for less than the full difference to be payable under the additional mortgage. This additional mortgage must be junior in priority to the second mortgage required by paragraph (a) of this section, bear interest at the same rate, which will accrue but not compound, and require no payment until the second mortgage is satisfied, when it will be payable upon demand of the Secretary or as otherwise agreed by the Secretary.

§ 401.471 HUD payment of a section 541(b) claim.

HUD will pay a section 541(b) claim from the appropriate insurance fund to the insured mortgagee on behalf of the mortgagor. The mortgagee must use the claim payment to prepay the principal balance of the insured mortgage, in whole or in part, as provided in the Restructuring Plan. All section 541(b) claims will be paid in cash. Part 207 of this title and sections 207(g) and 541(a) of the NA do not apply to a section 541(b) claim.

§ 401.472 Rehabilitation funding.

(a) *Sources of funds*—(1) *Project accounts.* The Restructuring Plan for funding rehabilitation must include funds from the project's residual re-

ceipts account, surplus cash account, replacement reserve account, and other project accounts, to the extent the PAE determines that those accounts will not be needed for the initial deposit to the reserves.

(2) *Debt restructuring.* The Restructuring Plan may provide for funding of rehabilitation through a new first mortgage in conjunction with a payment of a section 541(b) claim. The payment of claim may be in an amount necessary to facilitate the funding of the rehabilitation, by reducing the existing first mortgage debt to make refinancing proceeds available to fund rehabilitation.

(3) *Section 236(s) rehabilitation grant.* The Restructuring Plan may include a direct grant from HUD under section 236(s) of the NA made in accordance with § 401.473, to the extent that HUD has determined that funding is available for such a grant.

(4) *Section 8 budget authority increase.* The Restructuring Plan may include funding of rehabilitation from budget authority provided to HUD for increases in section 8 contracts, to the extent that HUD has determined that funding from this source is available.

(b) *Statutory restrictions.* Any rehabilitation funded from the sources described in paragraph (a) of this section is subject to the requirements in section 517(b)(7) of MAHRA for an owner contribution. The required owner contribution will be calculated as 20 percent of the total cost of rehabilitation, unless HUD or the PAE determines that a higher percentage is required. The owner contribution must include a reasonable proportion (as determined by HUD) of the total cost of rehabilitation from non-governmental resources. The PAE may exempt housing cooperatives from the owner contribution requirement.

(c) *Escrow agent.* The Restructuring Plan must provide for progress payments for rehabilitation, which must be disbursed by an acceptable escrow agent subject to PAE oversight or as otherwise provided by HUD.

§ 401.473 HUD grants for rehabilitation under section 236(s) of NA.

HUD will consider a direct grant for rehabilitation under section 236(s) of